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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1972

No. 72-682

LOCAL UNION NO. 749, INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS, AFL-CIO, *Petitioner,*

VS.

NATIONAL LABOR RELATIONS BOARD, CALIFORNIA BLOWPIPE & STEEL CO., INC., and SEQUOIA EMPLOYERS COUNCIL, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENTS CALIFORNIA BLOWPIPE & STEEL CO., INC. AND SEQUOIA EMPLOYERS COUNCIL IN OPPOSITION

OPINIONS BELOW

The written opinion of the Court of Appeals is reported at Appendix A. The Decision and Order of the National Labor Relations Board (hereinafter the "Board") is reported at 192 N.L.R.B. No. 58 (Pet. App. B).

QUESTION PRESENTED

The sole issue presented in this case is whether the Union violated Sections (8(b)(2) and 8(b)(1)(A) of the Act by demanding the discharge of employees who refused to assume full union membership but who were willing to pay to the Union an amount equal to its uniformly required initiation fee and dues.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act ("Act") (61 Stat. 136, 29 U.S.C. 151, *et seq.)* are set out at Pet. App. C.

COUNTERSTATEMENT OF THE CASE

A. THE BOARD'S FINDINGS OF FACT

At its facilities in Escalon, California, California Blowpipe & Steel Co., Inc. ("Employer") employs various employees, some of whom are represented by the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, Local Union No. 749, AFL-CIO ("Union").

The Employer and the Union have been parties to a series of collective bargaining agreements, covering employees generally classified as manufacturing, fabricating, contract and repair shop employees. The agreement which is relevant to this proceeding contained a lawful union shop provision. Relying on this provision of the collective bargaining agreement, the

Union attempted to cause the discharge of certain employees who didn't want to become full union members. These employees offered to pay an amount equal to the uniformly required initiation fee and dues of the Union, but refused to sign union application cards which specifically provided that by signing, the signatory agreed to abide by the Union's rules and regulations. The Employer consistently refused to discharge these employees.

1. Douglas Martin

Douglas Martin was hired by the Employer in late February, 1970, as a helper. Approximately one month after he began working for the Employer, Ralph Runyan, the Union's business agent, approached him. Runyan asked Martin if he would like to join the Union, but Martin said that he would not. Runyan then told him that if he did not join the Union he could not work there.

A month later, Runyan again approached Martin at work. He showed Martin some papers and asked if he was ready to join the Union. Martin replied that he would not sign the papers but would be willing to pay the Union dues and initiation fee. Runyan then threatened Martin that his refusal to sign the Union membership papers would cost him $300.

Some time later, Martin was summoned to the office of the plant supervisor by David Strimling, a representative of Sequoia Employers Council, the Employer's labor relations representative. Al King, the Union steward, was present. Martin offered King $170 cash

in payment of the Union dues and initiation fee. King asked Martin to sign the Union membership papers and to take an oath. Again Martin said that he would pay the money required but would not take a Union oath or sign an application for Union membership. King rejected Martin's tender of money.

Thereafter, by Runyan's letter of April 28, 1970, to Walt Hogan, the President of the Employer, the Union requested that Martin's employment be terminated under the union security clause of the collective bargaining agreement.

2. Jeffrey Roberts

Jeffrey Roberts was employed by the Employer as a welder's helper about August 1, 1970. Approximately 28 days after Roberts began working for the Employer, Runyan approached him at work and told him that he had to join the Union as his "30 days were almost up". Roberts replied that he was willing to join the Union to the extent of paying an amount equal to the Union dues and initiation fee, but that he was not willing to sign any union membership papers or to take an oath. At this time, Runyan told Jeffrey Roberts that he had some union membership papers for Roberts to sign, but Roberts refused. Runyan did not let Jeffrey Roberts see the papers.

Two or three weeks later, Runyan, again holding several papers in his hand, approached Jeffrey Roberts in the shop and asked him if he had the $150 initiation fee. Roberts answered that he did not have the $150 with him, but that he was willing to pay $50

then and $100 the next day. Roberts then took one of the papers, a union application card, out of Runyan's hand and read it. The card specifically provided that by signing it, the signatory agreed to abide by the Union's rules and regulations. Runyan again asked whether Jeffrey Roberts would sign the papers. When Roberts refused, Mr. Runyan said, "I'll get you fired".

3. Michael Roberts

Michael Roberts, the brother of Jeffrey Roberts, was hired by the Employer on August 28, 1970, as a welder's helper. On September 28, 1970, he was approached by Runyan in the Employer's shop. Runyan told him that he was required to join the Union and to pay an initiation fee. Runyan had application forms and a beneficiary form with him and asked Michael Roberts to sign them. One of the documents was an "official application" for union membership. Michael Roberts asked what would happen if he refused to sign the forms, to which Runyan responded that Roberts' employment would be terminated. Michael Roberts then asked if he could tender the money without signing the forms. Runyan said that the Union could not accept the money under those circumstances.

Nonetheless, Michael Roberts sent a money order for $25 to the Union as an initial payment on the fee. He enclosed a letter in which he stated that he would not sign the union application form. On October 7, 1970, Runyan wrote a letter to Michael Roberts in which he said that the money order was being re-

turned, and that the money could not be accepted until Roberts signed the union's membership application. By Runyan's letter of October 7, 1970, to August Sommerfeld at Sequoia Employers Council, the Union demanded that the Employer terminate Michael Roberts' employment for noncompliance with the union security clause of the collective bargaining agreement.

B. THE BOARD'S CONCLUSION AND ORDER

Based on the foregoing facts, the Board, as well as the Trial Examiner, concluded, *inter alia,* that the Union violated sections 8(b)(2) and 8(b)(1)(A) of the Act by attempting to cause the Employer to discharge Douglas Martin, Jeffrey Roberts and Michael Roberts for reasons other than nonpayment of the initiation fee and dues uniformly required as a condition of continued employment under the union shop provision of the collective bargaining agreement.

In order to remedy the unfair labor practices, the Board's Order provides that the Union shall cease and desist from attempting to cause the Employer to discriminate against those employees for reasons other than failure to pay the uniformly required initiation fee and periodic dues and from otherwise restraining or coercing employees in any like or related manner. Additionally, the Board's Order affirmatively requires that the Union rescind in writing its request for the discharge of Martin, Jeffrey Roberts and Michael Roberts; to notify those employees in writing that it has rescinded its request for their discharge and that

it will not require them to do anything other than pay the uniformly required initiation fee and dues provided in the union shop provisions of the collective bargaining agreement; and to post proper notices.

C. THE DECISION OF THE COURT OF APPEALS

The Court of Appeals denied the Union's Petition granted enforcement of the Board's Order. In so doing, the Court of Appeals relied on the well-established *Union Starch*[1] rule which the Board applied herein and which the court noted "has been sanctioned by virtually every other circuit court of appeals in the United States and referred to approvingly by the Supreme Court" (Pet. App. A, p. 4).

In addition, the Court of Appeals based its decision on the clear and unambiguous language of this Court in *N.L.R.B. v. General Motors Corp.*, 373 U.S. 734, 742, 743 (1963), wherein this Court referred approvingly to the *Union Starch* rule. Based on the above authority, as well as a long line of cases supporting and applying the *Union Starch* rule, the Court below concluded (Pet. App. A, p. 5):

> "In view of this long-established array of authority, we regard the issue [raised by the Union] as settled."

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[1] *Union Starch & Refining Co. v. N.L.R.B.*, 186 F.2d 1008 (7th Cir. 1951), *cert. denied*, 342 U.S. 815 (1951).

ARGUMENT

I

THE UNION'S PETITION PRESENTS NO IMPORTANT OR UNIQUE QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN OR NEEDS TO BE DECIDED BY THE COURT, NOR DOES THIS CASE RAISE ANY UNIQUE FEDERAL QUESTIONS TO BE DECIDED BY THE COURT

The questions which the Union seeks to raise in its petition fly in the face of a long line of decisions by this Court, the circuit courts of appeals, and the Board. These decisions recognize that "membership within the meaning of Sections 8(a)(3) and 8(b)(2) of the Act is limited to the payment of monies equal to the union's uniformly required initiation fee and dues. As the Court below properly noted, *the issues the Union attempts to raise have been settled.*

In an effort to avoid the force and effect of this long-established authority rejecting its position, the Union attempts to fabricate a conflict in the decisions of this Court in the *Radio Officers*[2] and *General Motors*[3] cases. A reading of these cases shows conclusively that there is no conflict whatsoever between these decisions of the Court. Further, the Union's attempt to create a dichotomy between proviso (A) and proviso (B) of Section 8(a)(3) is equally without substance or merit. The Union's argument in this regard creates at most a distinction without a difference. Consequently, the Union raises no issues warranting review by this Court.[4]

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[2]*Radio Officers' Union v. N.L.R.B.*, 347 U.S. 17 (1954).

[3]*N.L.R.B. v. General Motors Corp.*, 373 U.S. 734 (1963).

[4]Rules of the Supreme Court of the United States, Rule 19.

A. The legislative history shows that payment of an amount equal to the Union's uniformly required initiation fee and dues is the most that can be imposed on an employee as a condition of employment under a union security agreement

One of the major purposes of Sections 8(a)(3) and 8(b)(2) of the Act was to eliminate the abuses of the closed shop and still preserve agreements whereby employees were required to financially support the union. Congress was particularly concerned that the closed shop allowed unions to effectively regulate the employment of individuals by simply regulating their union membership. See, S. Rep. No. 105, 80th Cong., 1st Sess., 6-7 (1947); 93 Cong. Rec. 4135, 4191, 4432 (1947).

In order to eliminate these problems, legislation was proposed to outlaw the closed shop by precluding employers and unions from discriminating against an employee because of his failure to comply with internal union rules and regulations. Specific language was contained in Senate Bill 1126[5] and was adopted in substantial part in Sections 8(a)(3) and 8(b)(2) of the Act. This language was designed to limit union "membership" as a condition of employment solely to the payment of a union's uniformly required initiation fee and dues.

Ultimately, the Taft-Hartley Bill emerged as a composite of the provisions set forth in S. 1126 and H.R. 3020. This resulting bill included in substantial part Sections 8(a)(3) and 8(b)(2) of S. 1126. After

[5]See S. 1126, Sections 8(a)(3) and 8(b)(2), 80th Cong., 1st Sess. (1947).

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the conference report by the Joint Committee of the Houses on the bill was made to the Senate, Senator Murray of Montana articulated his opposition. In stating his position against adoption of the bill, Senator Murray had a clear understanding of the thrust of what ultimately was adopted as Sections 8(a)(3) and 8(b)(2) of the Taft-Hartley Act. In this regard, he stated the following at 93 Cong. Rec. 6656 (1947):

> "Under section 8(b)(2) a union may not demand the discharge of, and under section 8(a)(3) an employer may not discharge, an employee for non-membership in a union unless such non-membership arises from a failure to pay dues."

This Court has reviewed the legislative history of the Act in detail and concluded the following at *Radio Officers' Union v. N.L.R.B., supra,* at 40-42:

> "Lengthy legislative debate preceded the 1947 amendment to the Act which thus limited permissible employer discrimination. [Footnote omitted.] *This legislative history clearly indicates that Congress intended to prevent utilization of union security agreements for any purpose other than to compel payment of union dues and fees.* Thus Congress recognized the validity of unions' concern about 'free riders,' i.e., employees who receive the benefits of union representation but are unwilling to contribute their share of financial support to such union, and gave unions the power to contract to meet that problem while withholding from unions the power to cause the discharge of employees for any other reason. [Footnote omitted.] Thus an employer can discharge an

employee for non-membership in a union if the employer has entered a union security contract valid under the Act with such union, and if the other requirements of the proviso are met. No other discrimination aimed at encouraging employees to join, retain membership, or stay in good standing in a union is condoned." (Emphasis added).

B. The Union's threats and demands that the employer discharge employees who refused to join the Union but were willing to pay to the Union an amount equal to its uniformly required initiation fee and dues violated Sections 8(b)(2) and 8(b)(1)(A) of the Act

Both this Court and the circuit courts of appeals have long recognized that an employee cannot be required as a condition of employment under a lawful union security agreement to do more than pay the union's uniformly required initiation fee and dues. *Motor Coach Employees v. Lockridge,* 403 U.S. 274, 284 (1971); *N.L.R.B. v. Allis-Chalmers Mfg. Co.,* 388 U.S. 175, 196 (1967); *N.L.R.B. v. General Motors Corp., supra, at* 742 (1963); *Radio Officers' Union v. N.L.R.B., supra; Williams v. United States,* 431 F.2d 873 (5th Cir. 1970); *N.L.R.B. v. Sheet Metal Workers Int'l Ass'n, Local No. 65,* 359 F.2d 46 (6th Cir. 1966); *Leeds & Northrup Co. v. N.L.R.B.,* 357 F.2d 527 (3rd Cir. 1966); *N.L.R.B. v. Leece-Neville Co.,* 330 F.2d 242 (6th Cir. 1964), *cert. denied,* 379 U.S. 819 (1964); *Journeymen Plasterers' Protective & Ben. Soc. of Chicago v. N.L.R.B.,* 341 F.2d 539 (7th Cir. 1965); *I.U.E., Local 801 v. N.L.R.B.,* 113 U.S. App. D.C. 342, 307 F.2d 679 (D.C. Cir. 1962), *cert. denied,* 371 U.S. 936 (1962); *Puerto Rico Drydock & Marine Termi-*

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nals, Inc. v. N.L.R.B., 109 App. D.C. 78, 284 F.2d 212 (D.C. Cir. 1960), *cert. denied*, 364 U.S. 883 (1960); *N.L.R.B. v. Spector Freight Systems, Inc.*, 273 F.2d 272 (8th Cir. 1960), *cert. denied*, 362 U.S. 962 (1960); *N.L.R.B. v. Broderick Wood Products Co.*, 261 F.2d 548 (10th Cir. 1958); *N.L.R.B. v. Technicolor Motion Picture Corp.*, 248 F.2d 348 (9th Cir. 1957); *Union Starch & Refining Co. v. N.L.R.B.*, 186 F.2d 1008 (7th Cir. 1951), *cert. denied*, 342 U.S. 815 (1951).

The leading case involving the attempted application of a union security provision to cause the discharge of employees who refused to comply with union membership requirements other than payment of initiation fees and dues is *Union Starch & Refining Co. v. N.L.R.B., supra.* In that case, a union business agent refused to accept the employees' money until they had first become members of the union. To become members they were required to attend the next union meeting, at which their membership was to be voted on, to take the pledge of membership, and finally, to pay the initiation fee and two months' dues in advance. When the three employees refused to attend the meeting or to take the union pledge, the union had them discharged under the terms of its union security agreement with the employer. The Board held, *inter alia*, that by causing the employer to discharge the employees, the union violated Sections 8(b)(1)(A) and 8(b)(2) of the Act. On appeal to the Seventh Circuit Court of Appeals, the Board's decision was affirmed and enforced. Dealing specifically with the attempted application of union security

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agreements to impose on employees as a condition of employment requirements in addition to the payment of uniformly required union dues and initiation fees, the court stated the following at *Union Starch & Refining Co. v. N.L.R.B., supra,* at 1012:

> "We think the Board construed the statute in a reasonable manner and gave effect to all its provisions, and that its interpretation was in harmony with the purpose of Congress to prevent utilization of union security agreements except to compel payment of dues and initiation fees, and that the Board was justified in its conclusions."

The facts in the *Union Starch & Refining Co.* case closely parallel the situation of Douglas Martin, Jeffrey Roberts and Michael Roberts in the instant case. In both cases the unions sought to impose conditions of union membership in addition to the payment of the uniformly required initiation fee and dues even though the employees were willing to pay the initiation fees and dues. In the *Union Starch & Refining Co.* case, these additional requirements included attending a union meeting and taking a pledge of union membership. In the instant case, the additional requirements included the signing of union application cards providing, *inter alia,* that by signing the document the applicant agreed to abide by the laws and rules of the International Union as well as the local union. Furthermore, the unions in both cases attempted to cause the discharge of the employees who would not become "full" union members based on lawful union security provisions in the collective bargaining agreements.

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This Court has recently considered the meaning of "membership" with reference to Sections 8(b)(2) and 8(a)(3) of the Act. *Motor Coach Employees v. Lockridge, supra; N.L.R.B. v. General Motors Corp., supra.* The Court articulated the following at *N.L.R.B. v. General Motors Corp., supra,* at 742:

> "Moreover, the 1947 amendments not only abolished the closed shop but also made significant alterations in the meaning of 'membership' for the purposes of union-security contracts. Under the second proviso to §8(a)(3), *the burdens of membership upon which employment may be conditioned are expressly limited to the payment of initiation fees and monthly dues. It is permissible to condition employment upon membership, but membership, insofar as it has significance to employment rights, may in turn be conditioned only upon payment of fees and dues. 'Membership' as a condition of employment is whittled down to its financial core."* (Emphasis supplied).

Even more recently this Court stated the following at *Motor Coach Employees v. Lockridge, supra,* at 284:

> "On their face, [Sections 8(a)(3), 8(b)(2), and 8(b)(1)(A)] of the Act at least arguably either permit or forbid the union conduct dealt with by the judgment below. For the evident thrust of this aspect of the federal statutory scheme is to permit the enforcement of union security clauses, by dismissal from employment, only for failure to pay dues. Whatever other sanctions may be employed to exact compliance with those internal union rules unrelated to dues payment, the Act seems generally to exclude dismissal from employment."

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The Union argues that such interpretation of "membership" is inimical to the effective operation of a union. It contends that without a union application card, the union is unable to enforce its constitution and by-laws against employees. A simple answer to the Union's argument is that under the law, the Union is only entitled to enforce its constitution and by-laws against those employees who voluntarily assume full membership and who have not lawfully resigned from the Union prior to engaging in conduct which the Union's rules proscribe. *N.L.R.B. v. Granite State Joint Board, Textile Workers Union of America, Local 1029,* ..... U.S. ..... (No. 71-711, Dec. 7, 1972).

The Union in the instant case was free to establish its own internal rules and regulations and to establish its own criteria for full union membership. However, it was not free to impose any condition other than the payment of an amount equal to its uniformly required initiation fee and dues *as a condition of continued employment* under its lawful union security agreement with the employer. Nevertheless, the Union demanded that Douglas Martin, Jeffrey Roberts and Michael Roberts each sign certain papers, including a union application card, before their tender of the initiation fee and dues would be accepted. Despite the fact that each of these employees offered payment of the uniformly required initiation fee and dues, the Union sought their discharges. It is clear, therefore, that the Board properly concluded that the action of the Union in seeking the discharges of Douglas Martin, Jeffrey Roberts, and Michael Roberts violated Sections 8(b)(2) and 8(b)(1)(A) of the Act, and that

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the Court below has properly confirmed the Board's Decision and Order.

II

THE UNION'S PETITION DOES NOT PRESENT A CASE WHERE THE COURT OF APPEALS HAS RENDERED A DECISION IN CONFLICT WITH ANOTHER COURT OF APPEALS

The instant petition raises no important question of federal law requiring decision by this Court. The Court of Appeals has not decided this case contrary to any decision of this Court. Nor does the petition present a case where the Court of Appeals has departed from decisions of the courts of appeals in the other circuits. Significantly, the Petitioner has cited no authority contrary to the decision rendered by the Court below. The universal weight of judicial authority has rejected the claims made by the Union in its petition.[6]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

GEORGE J. TICHY, II,

LITTLER, MENDELSON & FASTIFF,

Counsel for Respondents California Blowpipe & Steel Co., Inc. and Sequoia Employers Council.

December 19, 1972.

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[6]See cases cited in Argument I, Sec. B.